

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA No.52/2016 & CM Nos.6123-24/2016**

% **5th August, 2016**

MS SANGEETA AGGARWAL Appellant
Through: Mr. Abhishek Kumar & Mr. Sachin Bansal,
Advocates

versus

SMT. SOHNI DEVIRespondent
Through: None

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant/appellant against the concurrent Judgments of the courts below; of the Trial Court dated 28.01.2015 and the First Appellate Court dated 21.11.2015; by which the courts below have decreed the suit for possession and mesne profits filed by the respondent/plaintiff/landlady.

2. The suit has been decreed after evidence was led by the respondent/plaintiff. The evidence of the defendant/appellant was struck off, inasmuch as the defendant/appellant failed to pay even the admitted rent of Rs.2,000/- per month, as per the Order dated 4.4.2014 passed by the trial Court

under Order XXXIX Rule 10 CPC. The case of the respondent/plaintiff was that the rent was not Rs.2,000/- per month as claimed by the appellant/defendant/tenant but was Rs.3,800/- per month, excluding electricity and water charges.

3. The suit was filed by the respondent/plaintiff/landlady with respect to the tenanted premises comprising one room on the ground floor of the property bearing no.H-36B, Gali no.4, Gauatm Budh Marg, Shakarpur, Delhi 92 leased from July, 2012. The lease, as per respondent/plaintiff, was granted for six months. The defendant/appellant, in addition to paying the monthly rental, was also to pay Rs.500/- for electricity and water charges.

4. The defendant/appellant contested the suit and admitted the relationship of the landlord and tenant. The defendant/appellant claimed that the rent was Rs.2,000/- per month, and not Rs.3,800/- per month. The defendant/appellant also pleaded that, in addition to one room, the tenanted premises included a bathroom and common use of latrine and the suit was bad as partial eviction was sought.

5. The suit was decreed holding rent was Rs.3,800/- per month and hence the premises did not have the protection of the Delhi Rent Control Act, 1958.

6. After the pleadings were complete, the following issues were framed on 21.05.2014:

- “1. Whether the defendant proves that the monthly rent of the premises is Rs.2,000/- including electricity and water charges? OPD
2. Whether the suit is barred by section 50 DRC Act? OPD
3. Whether the plaintiff is entitled to a decree of possession as prayed for? OPP
4. Whether the plaintiff is entitled to recovery of rentals including the water and electricity charges as prayed for? OPP
5. Whether the plaintiff is entitled to a decree for permanent injunction as prayed for? OPD
6. Relief.”

7. By an Order of the trial Court dated 18.02.2014, the appellant/defendant was directed to deposit the admitted arrears of rent at admitted rate of Rs.2,000/- per month, and also the appellant to continue to pay month-by-month, till the disposal of the suit, the admitted rent of Rs.2,000/- per month. The appellant/defendant however failed to do so and as a result of which her defence was struck off vide Order dated 4.4.2014, and which order reads as under:

“Defendant seeks to pay Rs.8,000/- in cash to the plaintiff in part compliance of the order dated 18.02.2014. Plaintiff, however, does not accept the same. It is the averment of the plaintiff that the defendant has not complied with the order dated 18.02.2014. On behalf of defendant, there is once again a request today for grant of one month more to make compliance of the order dated 18.02.2014.

On 18.02.2014, on plaintiff's application under order XXXIX Rule 10 read with section 151 CPC defendant was directed to pay to the plaintiff or deposit the entire arrears of rent/occupation and user charges @ Rs.2,000/- per month qua the tenanted premises w.e.f. August, 2013 and to continue to pay the same in future.

Despite lapse of more than a month, the defendant has not complied with the order dated 18.02.2014. On the last date of hearing, she paid Rs.2,000/- only and sought 15 days time to comply with the order. However, the defendant has not lived up to her undertaking. A tenant cannot seek to enjoy the tenanted premises without paying the rent/user charges. Under such circumstances, it is fit that defence of defendant be struck off. Defence of the defendant is accordingly struck off. Put up on 21.05.2014 for admission-denial of documents and for framing of issues.”

8. The defendant/appellant claimed that she was misled by her advocate, resulting in her defence being struck off, however, there is no answer as to how the defendant/appellant has completely complied with the order of deposit of *pendente lite* interest till date by making complete payment of even the admitted rent of Rs.2,000/- per month as no document whatsoever has been filed with the present appeal showing that the amount of Rs.2,000/- per month was paid till date and, especially before the passing of the Judgment by the Trial Court on 28.1.2015. In any case, I refuse to believe the case of the defendant/appellant that she was misled by her advocate, inasmuch as such a convenient stand taken and not making payment of even the admitted rent of Rs.2,000/- per month, though really the rent was Rs.3,800/- per month, shows that the order passed by the trial court, striking off the defence of the appellant/defendant, was correct.

9. That the respondent/plaintiff proved her case is clear from the discussion of para 12.5 of the judgment of the trial Court, which reads as under:

“12.5. The plaintiff/PW1 stated in her cross examination that the rent for the first time was Rs.4,300/- and electricity/water charges of Rs.500/- extra was paid by the defendant. It has been submitted on behalf of the defendant that the

rate of rent of Rs.3,800/- per month and Rs.500/- towards electricity and water charges could not be proved as the plaintiff, in her cross-examination, made a contradictory statement by deposing that the rent paid for the first time was Rs.4300/- and electricity and water charges of Rs.500/- extra was paid. The plaintiff/PW1 is a senior citizen aged around 67 years and may be she was appearing before the court for the purpose of deposition for the first time, thus, the court cannot be oblivious to the fact that due to her old age may be she could not comprehend this particular question put to her by the Ld. Counsel for the defendant. May be due to inadvertence, she cumulatively stated the rent to be Rs.4,300/- (Rs.3,800/- per month and Rs.500/- per month towards electricity and water charges) and thereafter, stated that Rs.500/- extra was paid towards electricity and water charges. The evidence led on behalf of the plaintiff has to be considered in toto and is to be appreciated in the light of other material on record. PW2 in whose presence the tenancy was created, categorically, stated the rate of rent to be Rs.3,800/- per month and Rs.500/- per month was agreed to be paid towards electricity and water charges. Even the son of the plaintiff/PW3 supported the plaintiff's case by deposing that the rate of rent was Rs.3,800/- per month and Rs.500/- per month was paid for electricity and water. As discussed hereinabove, no cross-examination of the aforesaid witnesses has been conducted with respect to the rate of rent. Thus, on the basis of preponderance of probabilities, the version of the plaintiff regarding the rate of rent being Rs.3,800/- per month and Rs.500/- per month towards electricity and water charges stands proved."

10. There is no reason why the case of the respondent/plaintiff should not be held to be proved as has been done by the courts below, inasmuch as the respondent/plaintiff stepped into the witness box and proved her case, whereas no defence evidence was led on behalf of the defendant/appellant. As the respondent/plaintiff has proved her case by leading evidence and there is no evidence led on behalf of the defendant/appellant, the courts below are justified in decreeing the suit.

11. I cannot agree to the arguments urged on behalf of the appellant/defendant that the suit was bad on account of partial tenancy, inasmuch as

besides the room the appellant/defendant/tenant had also in her tenancy one bathroom and common use of latrine, inasmuch as the doctrine of partial eviction is basically to ensure that part of the tenanted premises does not go back to the landlady and part does not remain with the tenant, resulting in the situation that the tenant is not able to properly use the tenanted premises. The doctrine of partial eviction cannot be used as a means to defeat the suit because if the case of the defendant/appellant is that, in addition to the room, there was also in her tenancy one bathroom and common use of latrine, the decree for possession will be treated as a decree not only for the room but also for the bathroom as also for the common use of the latrine. This argument urged on behalf of the appellant/defendant is therefore rejected.

12. A second appeal under Section 100 CPC can only be entertained if there arises substantial questions of law. In the facts of the case, no substantial question of law arises, much less a substantial question of law for the second appeal to be entertained.

13. The second appeal is therefore dismissed. Pending applications are also dismissed.

AUGUST 05, 2016
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VALMIKI J. MEHTA, J